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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIGUEL HUSSEY, et al.,
Plaintiffs,
v.
RUCKUS WIRELESS, INC., et al.,
Defendants.

Case No. [16-cv-02991-EMC](#)

**ORDER DENYING PLAINTIFF'S
MOTION TO ALTER OR AMEND
JUDGMENT**

Docket No. 100

This securities fraud action relates to the acquisition of Ruckus Wireless Inc. by Brocade Communications Systems, Inc. The case closed after the Court granted Defendants' motion to dismiss the second amended complaint ("SAC") and entered final judgment. *See* Docket Nos. 96-97 (order and final judgment). Currently pending before the Court is Lead Plaintiff's motion to alter or amend the judgment pursuant to Federal Rules of Civil Procedure 59(e) and 60. Lead Plaintiff contends that relief is warranted because the Court made manifest errors of law or fact.

The Court held a hearing on Lead Plaintiff's motion on September 14, 2017. At the hearing, the Court **DENIED** the motion. This order memorializes the Court's rulings, and provides additional analysis as necessary.

As an initial matter, the Court notes that, in evaluating Lead Plaintiff's motion, it does not consider the new evidence and/or allegations that Lead Plaintiff previously did not submit for the Court's consideration (*e.g.*, the expert declarations from Mr. Morris). Lead Plaintiff has not asserted that it is moving for relief based on newly discovered evidence (in all likelihood because it could not meet the criteria that the new evidence could not have been discovered earlier through due diligence). *See Dixon v. Wallowa County*, 336 F.3d 1013, 1022 (9th Cir. 2003). Nor has Lead Plaintiff cited any authority to support its claim that, for a Rule 59(e) or 60 motion, a party is

1 entitled to submit “clarifying” evidence never previously submitted where the basis is a manifest
2 error of law or fact. *Cf. Interstate Fire & Cas. Co. v. Catholic Diocese of El Paso*, 622 F. App’x
3 418, 420 (5th Cir. 2015) (stating that “[a] [R]ule 59(e) motion *not* based on newly discovered
4 evidence must ‘clearly establish’ a ‘manifest error of law or fact’; [a] district court’s determination
5 that it has made no manifest error of fact will not be disturbed absent a ‘clearly erroneous
6 assessment *of the evidence*’”) (emphasis added). Any such claim should be based on the record
7 that was presented to the court.

8 At the hearing, Lead Plaintiff argued that, even without, *e.g.*, the expert declarations, its
9 motion should be granted. Lead Plaintiff focused in particular on the Court’s statement that Lead
10 Plaintiff had failed to plead falsity because, even though “Lead Plaintiff assumes that Morgan
11 Stanley did a Brocade stock standalone valuation as part of its overall valuation of the merger
12 consideration, there is no factual basis for that assumption.”¹ Docket No. 96 (Order at 8). Lead
13 Plaintiff argued that the 14D-9 shows that Morgan Stanley did do a Brocade stock standalone
14 valuation – in particular, a discounted cash flow (“DCF”) analysis of Brocade alone. But as this
15 Court found, the 14D-9 reflects that any consideration by Morgan Stanley of Brocade’s financial
16 forecasts was in the context of its a DCF analysis for the post-merger company; there is nothing in
17 the 14D-9 stating that Morgan Stanley did a DCF analysis of pre-merger Brocade. *See* 14D-9, at
18 38 (stating that “Morgan Stanley utilized estimates from the Parent Forecasts . . . and the
19 Synergies for purposes of its discounted cash flow analysis of the *combined Parent and*
20 *Company*”; also stating that the value of the offer consideration was defined in part on “the
21 discounted cash flow value per share of Parent Common Stock, after *giving effect to the Merger*
22 *and incorporating the value of certain synergy forecasts*”) (emphasis added). Thus, the Court
23 finds no manifest error in this regard.

24 Moreover, the Court reaffirms its finding that Lead Plaintiff had conceded it did not
25 contest the accuracy of the DCF analysis. Even absent that concession, Lead Plaintiff has not
26 pointed to any defect in the inputs and methodology of the DCF.

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¹ This statement also affected the Court’s analysis of scienter.

1 Furthermore, as Defendants emphasized at the hearing, even if the Court had erred with
2 regard to either of the above issues, its order provided another independent ground for dismissal,
3 namely, that Lead Plaintiff had failed to adequately plead falsity because it failed to “show[] how
4 the standalone share value of Brocade stock, which allegedly was omitted from the DCF analysis,
5 was material to the overall multifaceted financial analysis” performed by Morgan Stanley. Docket
6 No. 96 (Order at 7) (noting that the DCF analysis was just “*one of several models* of financial
7 analysis which informed Morgan Stanley’s opinion as to . . . fairness”) (emphasis added). In its
8 papers, Lead Plaintiff argued that there were problems with the other financial models but it never
9 made that argument prior to the Court’s order dismissing the SAC. *See* Docket No. 96 (Order at 7
10 n.5) (noting that Lead Plaintiff “does not challenge the accuracy or completeness of the other
11 models”). At the hearing, Lead Plaintiff tendered a different argument – more specifically, that
12 the DCF analysis was particularly important because it was the only income-driven analysis while
13 the other financial models took a market approach. But as above, Lead Plaintiff failed to make
14 this argument prior to the Court’s order dismissing the SAC. Thus, the Court concludes that there
15 was no manifest error here as well.


16 Finally, for clarity, the Court reaffirms all other bases on which it dismissed the SAC,
17 including failure to adequately allege scienter.

18 Lead Plaintiff’s motion to alter or amend the judgment is therefore denied.

19 This order disposes of Docket No. 100.

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21 **IT IS SO ORDERED.**

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23 Dated: September 18, 2017

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26 EDWARD M. CHEN
27 United States District Judge
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